



VETERANS
EDUCATION SUCCESS

INSIDE

Overview of VA and SAA Authorities
Governing Approval and Disapproval

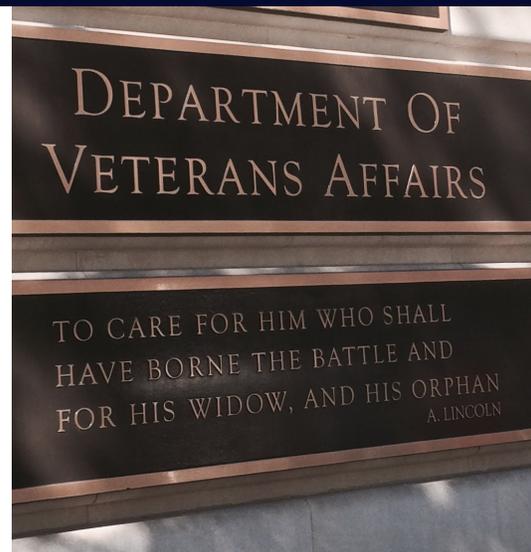
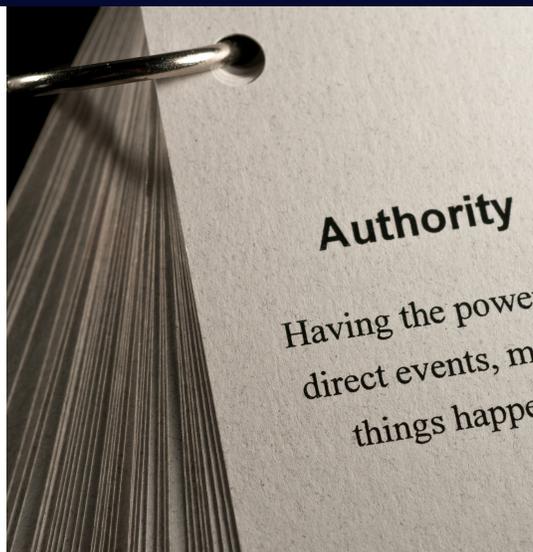
Statutory Ambiguity Over VA and
SAA Roles and Responsibilities

Recommendations to Clarify
VA and SAA Roles

VA AND SAA APPROVAL AND DISAPPROVAL AUTHORITY SHOULD BE CLARIFIED

SEPTEMBER 2019
REPORT

WALTER OCHINKO
RESEARCH DIRECTOR



ABOUT VETERANS EDUCATION SUCCESS

Veterans Education Success (VES) works to advance higher education success for veterans, service members, and military families, and to protect the integrity and promise of the GI Bill and other federal education programs. We are policy experts, academic researchers, and veterans' advocates. VES provides:

- **Free Help for Veterans and Military-Connected Students:** Free legal services, advice, and college and career counseling for the GI Bill.
- **Research & Reports:** Non-partisan research on issues of concern to student veterans, including student outcomes and federal oversight.
- **Policy Advocacy:** Assistance to policymakers to improve higher education quality and veterans' success and to protect the integrity of the GI Bill.
- **Civic Engagement:** Helping veterans participate in their democracy by engaging government officials and the media.
- **Legal Advocacy:** Free legal assistance for military-connected students and whistleblowers, and legal work building cases to stop college consumer fraud.

“The relationship and relative authority and responsibility of the Veterans’ Administration and State Approving Agencies is not clearly defined by the present law, resulting in contention and confusion between Veterans’ Administration and State Approving Agencies.” House Select Committee to Investigate Educational Training and Loan Guarantee Programs Under the GI Bill (1952)

This report is one in a series of three reports by Veterans Education Success on State Approving Agency (SAA) and Department of Veterans Affairs (VA) oversight of GI Bill participating schools. A second, forthcoming report examines the failure of VA and most SAAs to act on early warning signs of risks to GI Bill beneficiaries and taxpayers and a third [report](#) examines how overemphasis on payment accuracy is impeding more effective SAA oversight of schools.

Contents

Executive Summary

- 1. Approval and Disapproval Authorities Are Sources of Tension**
 - 2. Statutory Changes to Approval and Disapproval Authorities in 2011 Were Spotty, and Not All Were Reversed in 2016**
 - 3. Some Implementing Regulations Are Inconsistent with Statute**
 - 4. Conclusions and Recommendations**
 - 5. Appendix: References to VA and SAA in Approval and Disapproval Authorities in Statute and Certain Implementing Regulations**
-

Abbreviations

C.F.R.	Code of Federal Regulations
SAA	State Approving Agency
U.S.C.	United States Code
VA	U.S. Department of Veterans Affairs
OIG	Office of Inspector General

Executive Summary

State Approving Agencies (SAAs) and the U.S. Department of Veterans Affairs (VA) are expected to work in tandem to approve, disapprove, and oversee the educational benefits provided under 38 United States Code (U.S.C.) and its implementing regulations.¹ However, confusion and disagreement over their specific roles and responsibilities have existed since the 1950s. The 1952 report of the *House Select Committee to Investigate Educational Training and Loan Guarantee Programs Under the GI Bill* found that “The relationship and relative authority and responsibility of the Veterans’ Administration and State Approving Agencies is not clearly defined by the present law, resulting in contention and confusion between Veterans’ Administration and State Approving Agencies.”²

Historically, both SAAs and VA have had approval and disapproval authorities. In 2011 and 2016, however, the statutory language describing those authorities was amended. The 2011 changes, made in the context of a significant restructuring of SAAs’ day-to-day responsibilities, undermined the primacy of SAAs’ approval and disapproval authority.³ The 2016 changes were intended to restore SAA’s approval authority primacy. Although the intent of the 2016 changes is clear, the changes were piecemeal rather than comprehensive. As a result, the changes created ambiguity and contributed to disagreements between VA and SAAs and between VA and the VA Office of Inspector General (OIG) about these authorities.

2011 and 2016 Statutory Changes

In 2011, VA was given a greater role in the approval of accredited for-profit schools (§ 3675) and in disapprovals (§ 3679)—either the Secretary or SAAs could approve or disapprove programs.⁴ No changes were made in § 3672, which already gave both the Secretary and SAAs coequal approval authority over accredited public and nonprofit institutions, or in § 3676, which reserved for SAAs the approval authority for nonaccredited programs.

In 2016, some, but not all, of VA’s authority to approve programs was rolled back. “The Secretary” was replaced with “the Secretary acting in the role of a State approving agency” in subsections (b)(2)(A) and (b)(2)(C) of § 3672.⁵ The primacy of the SAA role was emphasized by the phrasing of the revisions, which led off with the “SAA” followed by the reference to the “Secretary when acting in the role of an SAA.” In contrast, no changes were made in 2016 to disapproval authorities, which are assigned consistently to both VA and SAAs. We found only

¹38 U.S.C. is the statute governing the GI Bill. In general, each statutory provision has a corresponding regulation, that spells out how a law will be implemented.

²The Veterans’ Administration became a cabinet-level Department in 1988.

³The changes made to SAAs’ day-to-day activities are discussed in detail in chapter 2 of this report. Those changes provide context for the 2011 reordering of SAA responsibilities.

⁴P.L. 111-377, § 203.

⁵P.L. 114-315 § 408. Currently, VA acts as the SAA in Hawaii, Oregon, and the Virgin Islands, which lack SAAs.

one reference to a disapproval authority that used the phrase “VA when acting in the role of an SAA,” a new provision that was added in 2018. We also identified several inconsistencies between statutory and regulatory references to approval and disapproval authorities.

Although the intent of the 2016 changes is clear, the changes were piecemeal rather than comprehensive, creating ambiguity and contributing to disagreements between VA and SAAs and between VA and the VA OIG about those authorities.

VA Has SAA Oversight Authority

Although the piecemeal changes to statutory approval and disapproval authorities have created ambiguity, VA’s authority to oversee SAAs is clear. Because SAAs operate under contract with VA, their actions are subject to the Department’s oversight. In exercising that oversight authority, VA has not hesitated to weigh in when it questioned the basis for an SAA approval or disapproval. Moreover, VA has exclusive authority over payments to schools serving beneficiaries. If VA disagrees with an SAA approval decision it can “not approve the enrollment of an eligible veteran,” which for all practical purposes is the equivalent of disapproving a program.

VA’s broad role in disapprovals is important because the Department can act quickly against all schools under common ownership if evidence emerges that new enrollment should be suspended; suspension can lead to disapproval. For example, VA could have used its disapproval authority to suspend new enrollment at Argosy University in February 2019 when the Department of Education terminated the school’s participation in Title IV for failure to disburse federal student aid. When there are flashing red lights about an imminent school closure, leadership by VA in suspending enrollments would be much more efficient than relying on multiple SAAs to suspend new enrollment, particularly when schools like Argosy operate across the country. Rather than exercising its authority, however, VA notified Argosy beneficiaries that the Education Department’s actions did not affect their use of benefits. GI Bill beneficiaries remained enrolled when Argosy closed a short time later.

1. Approval and Disapproval Authorities Are Sources of Tension

In a December 2018 [report](#), the VA Office of Inspector General (OIG) criticized VA’s oversight of SAAs; SAAs are state-based organizations with which VA contracts to help ensure that schools eligible to enroll GI Bill beneficiaries meet statutory requirements both when approved and on a continuing basis. The OIG concluded that VA would make an estimated \$2.3 billion in improper payments to schools over 5 years if it did not implement the report’s recommendations. The most common oversight weakness, involving 57 percent of the oversight errors, entailed SAAs’ failure to detect potentially deceptive advertising when

approving or reviewing degree programs, including false claims about job placement rates, accreditation, and post-graduation earnings. Sec. 3696 of the statute governing the GI Bill requires “the Secretary” to not approve the enrollment of eligible beneficiaries in such institutions.⁶

VA-OIG Findings

“SAAs lacked effective, sufficient controls to ensure the proper review and evaluation of programs, program modifications, and advertisements after programs were approved. The audit team found that six of the seven SAAs reviewed had approved 35 ineligible or potentially ineligible programs at schools that enrolled Post-9/11 GI Bill students. The 35 ineligible or potentially ineligible programs received more than \$1.54 million in payments from Veterans Benefits Administration (VBA) during the audit review period from February 2015 through January 2016. In addition, the audit team noted that 29 of the 35 ineligible or potentially ineligible programs (83 percent) were at for-profit schools that received about \$1.5 million of these payments (97 percent). Based on its review of the seven SAAs, the audit team estimated that 44 of 51 SAAs (86 percent) did not adequately oversee the education and training programs to ensure only eligible programs participated in the Post-9/11 GI Bill program. Because the VBA and the SAAs lacked effective controls to ensure the proper review, approval, and monitoring of programs, VBA could not provide reasonable assurance that Post-9/11 GI Bill benefits were paid to eligible schools and programs and that students received quality education and training.”

Source: VA OIG 16-00862-179

The OIG attributed the oversight weaknesses identified during the audit to VA’s position that it lacked approval and disapproval authority for GI Bill programs and was prohibited from supervising or controlling SAAs. For example, VA stated that:

“According to VA OGC [Office of General Counsel], SAAs have nearly exclusive authority to approve, suspend, or withdraw programs for the Post-9/11 G.I. Bill, not the VA, and this SAA authority is largely unchallengeable. VA holds certain approval authorities as well, but mostly in the context of when acting in the role of the SAA (i.e., in situations where the state has no SAA). Therefore, SAAs hold the authority and VA fully expects them to do the job according to the terms of the contract....”⁷

The OIG disagreed with the statement that SAAs are primarily responsible for approvals and are given this authority nearly exclusively under the law:

“The provisions of 38 CFR § 21.4152, *Control by agencies of the United States*, prohibits VA from supervising or controlling the SAAs, but also specifically states that VA retains the right to determine whether the SAAs are complying with Title 38. Furthermore, 38 U.S.C. § 3679, *Disapproval of courses*, also allows VA to approve or disapprove schools, courses, or licensing or certification tests and does not include any limitations stating VA can only exercise this authority when acting in the role of an SAA. The OIG also noted that the statement about the nearly

⁶For example, the OIG report noted that DeVry retained its eligibility to enroll veterans despite its [2016 settlement](#) with the Federal Trade Commission over the school’s exaggerated job placement rates.

⁷See pp. 68-69 of hyperlinked OIG report.

exclusive authority of the SAAs, except in cases where the state does not have an SAA, directly contradicts prior VBA [Veterans Benefits Administration] actions....”⁸

The OIG also concluded that, under Office of Management and Budget guidance and the Financial Integrity Act, VA is “ultimately responsible” for safeguarding federal assets and preventing waste, fraud, and mismanagement.⁹

We conducted a thorough review of all statutes and regulations governing approvals and disapprovals and found that inconsistencies in the statute and implementing regulations create ambiguity about the approval and disapproval authorities, which are a source of tension and disagreement (see table 2).

2. Statutory Changes to Approval and Disapproval Authorities in 2011 Were Spotty, and Not All Were Reversed in 2016

Prior to 2011, 38 U.S.C. assigned primacy in approval and disapproval of programs to SAAs. The Secretary’s approval and disapproval authorities were limited to specific types of programs, such as those offered by a federal agency, apprenticeships offered in more than one state, or when there was no SAA. Changes made in 2011 increased the Secretary’s authority in approvals and disapprovals. Some, but not all, of the statutory changes enacted in 2011 with respect to approval and disapproval authorities were reversed in 2016.¹⁰ An appendix to this report summarizes the references to approval and disapproval authorities in 38 U.S.C. and certain regulations that appear to be inconsistent with statute.

If the goal of these 2016 statutory changes was to limit the Secretary’s role in approving and disapproving degree programs, their failure to do so comprehensively throughout the statute allowed for the emergence of dueling narratives about roles and responsibilities. In fact, it is unclear how these modest statutory tweaks resolved the issue because, even prior to the 2016 changes, VA’s position was that it lacked approval and disapproval authority.

In response to a [letter](#) from eight U.S. Senators about questionable programs approved for the GI Bill, VA’s September 2015 reply [stated](#):

“The authority for the approval of educational programs is specifically granted to the State Approving Agencies (SAA) under Title 38 of the United States Code.... Any course approved for

⁸See pp. 28-29 of hyperlinked OIG report. The OIG inaccurately describes § 3679 as encompassing approval authority. Section 3679 addresses VA and SAAs *disapproval* authorities.

⁹See pp. 15 and 18 of the hyperlinked OIG report.

¹⁰The 2011 changes did not affect the Secretary’s authority to approve courses offered by other federal agencies.

benefits that fails to meet any of the approval requirements should be immediately disapproved by the appropriate SAA. VA is prohibited, by law, from exercising any supervision or control over the activities of the SAA, except during the annual SAA performance evaluations.”

This statement of its authorities vis-à-vis those of SAAs was almost identical to VA’s response to the OIG more than 3 years later, that is, that SAAs have near exclusive authority to approve, suspend, or withdraw the approval of degree programs.

2011 Statutory Changes

In addition to changes in approval and disapproval authorities, P.L. 111-377, the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, also made notable changes to this new benefit program that begun to enroll beneficiaries in August 2009.¹¹ Key changes included reducing SAAs’ approval workload and providing VA the authority to better utilize the services of SAAs.

For example, P.L. 111-377 amended § 3672 to establish a “deemed approved” category of institutions with a more limited approval process because they already met one of the key GI Bill approval criteria—accreditation by an organization recognized by the U.S. Department of Education.¹² No were changes made to the provision covering the approval of non-accredited courses in § 3676, which assigned approval authority to SAAs, but a technical change was made to § 3671 to acknowledge that the Secretary’s approval authority in § 3672 does not extend to § 3676. No changes were made to the approval authorities of § 3672(a) because it already recognized that either the SAA or the Secretary could approve courses. However, § 3675(a)(1) governing the approval of accredited courses was amended by replacing “A State Approving Agency may approve the courses offered by an educational institution” with “The Secretary or a State Approving Agency may approve accredited programs (including non-degree accredited programs) offered by proprietary for-profit educational institutions.” Finally, § 3679 (a), disapproval of courses, was amended by inserting “the Secretary or” after “disapproved by” in both places it appears, so that it now reads “...disapproved by the Secretary or the appropriate/applicable State approving agency.” Table 1 identifies the provisions of 38 U.S.C. that were amended in 2011 (see p. 8).

According to the [Senate Report](#) on P.L. 111-377, these changes were derived from a VA draft bill that gave VA new authorities to better utilize the services of SAAs. The Committee Report concurred with VA’s belief that “these amendments will contribute to streamlining the administration of educational assistance...” and allow SAAs to help “...identify issues and problems that may arise regarding...instances of fraud, misrepresentation, and abuse” related

¹¹For example, it (1) expanded eligible courses from only those leading to a college degree to programs at trade and technical schools, flight training schools, correspondence schools, and other programs, which had not been eligible to participate in the new Post-9/11 GI Bill; (2) revamped how tuition and fee payments were calculated for participating institutions; and (3) made Active Guard Reserve and individuals activated to full-time National Guard duty eligible for the benefit.

¹²See Sec. [203](#).

to implementation of the new Post-9/11 GI Bill. The Senate report cited the findings of a March 2007 [GAO report](#), which had identified an overlap between functions performed by SAAs and the Departments of Labor and Education; creation of the “deemed approved” category of schools was intended to address this perceived duplication.¹³ In reducing SAAs’ approval workload, Congress also authorized VA to use SAAs for compliance surveys—audits of payments to schools.

The Senate Report did not specifically address the rationale for giving VA approval authority over accredited courses at for-profit schools. One hypothesis is that it better aligned § 3675 authorities with those in § 3672, which already recognized that both VA and SAA had approval authority for accredited and certain other programs. Nor did the Senate Report address why SAAs retained exclusive approval authority over nonaccredited programs (§ 3676). Not only did these changes further cloud the issue of approval authority, but they also resulted in the unforeseen restriction of SAA approval activities when VA immediately [assigned](#) over 50 percent of compliance surveys conducted nationwide to the SAAs.

2016 Statutory Changes Were Made Selectively, Not Comprehensively

In 2016, the statute was amended again, reversing some, but not all of the changes made in 2011 (see table 1).

Section [408](#) of P.L. 114-315 replaced “the Secretary and the State approving agency” with “the State approving agency and the Secretary when acting in the role of a State approving agency” in § 3672(b)(2)(A); and in § 3675(a)(1), (b), and (b)(1). However, language indicating that the Secretary shared these authorities with SAAs was retained in other provisions, including “approval of courses,” § 3672(a), which states that courses must be approved by “the State approving agency for the State where the educational institution is located, or by the Secretary.” In addition, § 3672(b), which reserves approval authority over programs offered by other federal agencies to the Secretary also states:

“The Secretary may approve any course in any other educational institution in accordance with the provisions of this chapter and chapters 34 and 35 of this title.”

The Legislative Director of the National Association of State Approving Agencies supported the 2016 wording changes during April 2016 [testimony](#):

“This change clarifies and codifies that State approving agencies have the primary statutory authority to protect our Veterans and their families from those who would engage in unscrupulous conduct.”

¹³The concern that SAAs duplicate the oversight provided by accreditors is overstated. SAAs approve the GI Bill participation of specific degree programs offered by schools, not the institutions themselves. On the other hand, regional and national accreditors focus on whether the institution as a whole meets certain quality standards. Only specialized accreditors conduct in-depth reviews of specific degree programs, such as medicine or law.

No changes were made in § 3679, disapproval authorities, which retained 2011 language giving both the Secretary and SAA disapproval authority.¹⁴ Nor were any changes made in § 3671(b)2), which states that references to an SAA shall be deemed to refer to the Secretary. In addition, § 3676, approval of an unaccredited course, reserves that authority to SAAs and was not changed in either 2011 or 2016.

Table 1: Key Approval and Disapproval Authorities in 38 U.S.C. That Were Modified in 2011 and 2016

Section of 38 U.S.C	Section title	2011 amendments	2016 amendments
§ 3671	Designation	Yes	No
§ 3672	Approval of courses (accredited degree programs at public and nonprofit colleges and certain other courses approved by another federal or state entity)	No	Yes
§ 3675	Approval of accredited courses (at for-profit schools)	Yes	Yes
§ 3676	Approval of nonaccredited courses	No	No
§ 3679	Disapproval of courses	Yes	No

Source: VES analysis of 38 U.S.C.

Authority to Not Approve Enrollment Rests with VA

Two additional statutory provisions use the phrase “shall not approve the enrollment of an eligible veteran.” The authority to not approve enrollment is assigned to the Secretary in both § 3680A and § 3696. For example, § 3680A directs the Secretary to not approve enrollment in certain programs, including avocational or recreational courses; flight training at an Institution of Higher Learning that does not award credit toward a standard college degree; or courses where beneficiaries constitute more than 85 percent of the enrolled students.¹⁵ In a similar vein, § 3696 directs the Secretary to not approve enrollment in courses that are offered by institutions engaged in misleading advertising or that pay commissions for securing enrollments.

The authority to not approve enrollment is a reflection of VA’s exclusive authority over payments to institutions and beneficiaries. If an SAA erred in approving a program that was precluded from enrolling beneficiaries under § 3680A or § 3696, VA could disapprove enrollment by refusing to initiate payments for tuition or other benefits. Such an action would have the same impact as disapproving an institution.

Exceptions to Control and Supervision of SAAs

VA’s contention that SAAs have nearly exclusive and largely unchallengeable approval and disapproval authority and that the Department is prohibited from supervising SAAs is

¹⁴Subsection (e), which was added by § 103 of [P.L. 115-407](#) in 2018, refers to the Secretary when acting in the role of the SAA. It addresses the protection of a beneficiary’s enrollment due to delayed VA disbursements to the school.

¹⁵With respect to the 85 percent cap on courses that enroll beneficiaries, VA stops new enrollment until the proportion of veterans and eligible family members in a program falls below the cap.

misleading. SAAs operate under contract with VA, and as a result, SAA actions are subject to the Department's oversight. Although [§ 3682](#) prohibits supervision and control of SAAs by VA, it recognizes that there are exceptions to this prohibition.

“Nothing in this section shall be deemed to prevent any department, agency, or officer of the United States from exercising any supervision or control which such department, agency, or officer is authorized by law to exercise....”

Moreover, [§ 21.4152](#), the implementing regulation outlines the “authorities retained by VA” despite the prohibition. For example, the prohibition does not restrict the authority conferred on VA: (1) “To determine whether the SAAs under the terms of the reimbursement agreements are complying with the standards and provisions of the law....” or (2) “To disapprove schools, courses, or licensing and certification tests for reasons stated in the law and to approve schools, courses, or licensing or certification tests notwithstanding lack of State approval.”

As the VA IG noted, VA has not hesitated in the past to weigh in when it questioned the basis for an SAA's approval or disapproval. Our analysis of tensions between VA and SAAs over specific approvals and disapprovals are described in greater detail in this forthcoming VES report.

- VA objected to the Arizona SAA's approval of Ashford because Ashford's main campus was located in California, not Arizona. In 2017, VA threatened to cancel the Arizona SAA's contract for failure to follow statutory requirements and gave Ashford 60 days to apply for approval in California or risk losing its ability to enroll veterans. When the California SAA notified Ashford of its “intent not to act” because of the pending California Attorney General's lawsuit over the school's misleading advertising and recruiting practices, VA threatened to cancel California's contract. Section [§ 21.4250\(b\)\(3\)](#), states that a school may request VA's approval if an SAA notifies the institution that it does not intend to act on its application. Notwithstanding this regulatory language, VA asserted that, under the terms of the contract, the California SAA's only options were to approve or disapprove a school's application.
- In August 2018, VA informed the California SAA that it was at risk of losing its contract for failure to approve an application by the University of Maryland University College and for its disapproval of a law school experiencing serious financial issues that was at risk of losing its accreditation because of low-bar passage rates. The California SAA subsequently reversed its decisions on these two schools.
- Citing these and other example, VA [informed](#) the California SAA on September 6, 2019, that its contract would not be renewed for fiscal year 2020.

3. Some Implementing Regulations Are Inconsistent with Statute

In addition to inconsistencies between the assignment of authorities in statute, we also found discrepancies between their assignment in statute and regulation. For example:

- *Designation (§ 3671 and § 21.4150)*. Section [3671](#) of 38 U.S.C. addresses the designation of an SAA by the governor of each state. When a state fails to designate an SAA, § 3671 authorizes all references to an SAA to be deemed to refer to the Secretary because the Secretary would be acting as the SAA. However, subsection (b)(2) also states that “Except as otherwise provided in this chapter, in the case of courses subject to approval by the Secretary under section 3672 of this title, the provisions of this chapter which refer to the State approving agency shall be deemed to refer to the Secretary.” This exception language was added by P.L. 111-377 in 2011. The “except” clause reflects the fact that § 3676 reserves to SAAs the authority to approve nonaccredited programs. The implementing regulation, 38 C.F.R. § [21.4150](#), was not changed in 2011 and it limits VA approval, disapproval, or suspension authority to just a few enumerated program types— apprenticeship programs, courses offered by another federal agency, etc. These limited authorities are inconsistent with the Secretary’s broader authorities referenced in § 3671.
- *Disapproval of enrollment in certain courses (§ 3680A and § 21.4252)*. Section [3680A](#) gives the Secretary the authority to not approve avocational and recreational courses, but [§ 21.4252](#) leaves the authority unassigned.
- *Licensure and Certification Tests (§ 3672 and § 3689 and § 21.4259)*. Section [3672](#) gives VA approval authority over programs at public and nonprofit institutions of higher learning and over licensure and certification tests. Section [3689](#) authorizes the Secretary to delegate licensure and certification test approval to SAAs. However, subsection (c) of § 21.4259 [suspension or disapproval] states that “The Department of Veterans Affairs will suspend approval for or disapproval of courses or licensing or certification tests under conditions specified in paragraph (a) of this section where it functions for the State approving agency.” The language in the implementing regulation reflects the 2016 changes but is in conflict with § 3672 (a) and (b)(1), which give the Secretary approval authority. Section 21.4259 appears to have been last updated in 2007.

4. Conclusions and Recommendations

References to VA and SAA approval and disapproval authorities are found in numerous statutory provisions but inconsistencies in the assignment of those authorities has created ambiguity and led to tensions between VA and SAAs and between VA and the OIG.

Congress should clarify the approval and disapproval authorities in statute. Congress should clearly and explicitly recognize circumstances in which VA has an appropriate role in both approvals and disapprovals, even if that role is secondary to that of SAAs. In addition, VA should correct regulations that are in conflict with the statutes that they are intended to implement.

Such clarifications, however, will not address additional sources of tension between VA and SAAs: (1) the high priority VA places on compliance surveys (financial audits), which leaves SAAs little time and resources for approvals and other routine oversight that helps ensure adherence to statutory requirements, and (2) VA’s use of its contract oversight authority to dictate policy that contradicts the statute governing the GI Bill. These issues are addressed in a companion [report](#)—*Overemphasis on Payment Accuracy Impedes More Effective Oversight of Schools Participating in the GI Bill*.

5. Appendix: References to VA and SAA Approval and Disapproval Authorities in Statute and Certain Implementing Regulations

VES reviewed the approval and disapproval authorities in both statute and regulation, 38 U.S.C. and 38 C.F.R., respectively. Table 2 summarizes the references to VA and SAAs in the key statutory approval and disapproval authorities in effect as of August 2019. The table also includes language from several implementing regulations that appear to be inconsistent with statute.

Table 2: VA and SAA Approval and Disapproval Authorities in Statute and Regulation as of August 2019

Statute: 38 U.S.C.		
Section title	Section number	Applicable subsections
Designation	§ 3671	<ul style="list-style-type: none"> • (b) “If any State fails or declines to create or designate a State approving agency...the provisions of this chapter which refer to the State approving agency shall, with respect to such state, be deemed to refer to the Secretary.” • (c) “Except as otherwise provided in this chapter, in the case of courses subject to approval by the Secretary under section 3672 of this title, the provisions of this chapter which refer to a State approving agency shall be deemed to refer to the Secretary.”^a
Approval of courses (accredited standard college degree programs offered at public and not-	§ 3672	<ul style="list-style-type: none"> • (a) “An eligible person or veteran shall receive benefits...only if such course is approved...by the State approving agency for the State where such educational institution is located or by the Secretary....” Each State approving agency shall notify the Secretary of the disapproval of any

<p>for-profit institutions and certain other courses)</p>		<p>course previously approved and shall set forth the reasons for the disapproval.”</p> <ul style="list-style-type: none"> • (b) The Secretary shall be responsible for the approval of courses of education offered by any agency of the Federal Government authorized under other laws to supervise such education. The Secretary may approve any course in any other educational institution in accordance with the provisions of this chapter and chapters 34 and 35 of this title.” • (b)(2)(A) “...a program of education is deemed to be approved for purposes of this chapter if a State approving agency, or the Secretary when acting in the role of a state approving agency determines....”^a [accredited degree programs at nonprofit and public institutions; FAA approved flight training; registered apprenticeships] • (b)(2)(C) “a course...shall not be deemed to be approved for purposes of this chapter unless—(i) a State approving agency, or the Secretary when acting in the role of the state approving agency, determines that the course meets the applicable criteria of such paragraphs;”^b [namely, accredited by an organization recognized by the Secretary of Education and prepares graduates to obtain necessary licensure and certification]
<p>Approval of accredited courses</p> <p>(those not covered by § 3672—that is, degree and non-degree programs offered by for-profit schools)^c</p>	<p>§ 3675</p>	<ul style="list-style-type: none"> • (a)(1) “A State approving agency, or the Secretary when acting in the role of a State approving agency....”^a [accredited programs, including non-degree programs, at for-profit schools] • (a)(2)(B) “Except as provided in section 3672(e)...a State approving agency may utilize...for approval of courses....” [accreditation by ED approved accreditor] • (a)(3)(A) “An educational institution shall submit an application for approval of courses to the appropriate State approving agency....” • (b) “As a condition for approval under this section, the State approving agency, or the Secretary when acting in the role of a State approving agency, must find the following....” • (c) “A State approving agency may approve the entrepreneurship courses....”
<p>Approval of nonaccredited courses</p>	<p>§ 3676</p>	<ul style="list-style-type: none"> • (a) “No course of education which has not been approved by a State approving agency pursuant to

		<p>section 3675 of this title, which is offered by a public or private, profit or nonprofit, educational institution....”</p> <ul style="list-style-type: none"> • (c) “The appropriate State approving agency may approve the application...when the institution and its non-accredited course...have met the following criteria:....” [including, qualifies individuals to obtain any state required licensure or certification]
Disapproval of courses	§ 3679	<ul style="list-style-type: none"> • (a) “...any course approved for the purposes of this chapter which fails to meet any of the requirements of this chapter shall be immediately disapproved by the Secretary or the appropriate State approving agency....” • (b) “Each State approving agency shall notify the Secretary of each course which it has disapproved.... The Secretary shall notify the State approving agency of the Secretary’s disapproval of any educational institution under chapter 31 of this title.” [training and rehabilitation for veterans with service-connected disabilities] • (c) “...the Secretary shall disapprove a course of education provided by a public institution...if that institutions charges tuition and fees....” [requirement for public institutions to charge in-state tuition to beneficiaries] • (d) “...the Secretary or the applicable State approving agency shall disapprove a course of education described in (14) or (15) of section 3676(c)....” [qualifies graduates to obtain any necessary state licensure or certification] • (e) “...beginning on August 1, 2019, a State approving agency or the Secretary when acting in the role of the State approving agency...” [protecting beneficiaries’ enrollment due to delayed disbursement to the school by VA]
Disapproval of enrollment in certain courses	§ 3680A	<ul style="list-style-type: none"> • (a) “The Secretary shall not approve the enrollment of an eligible veteran in any of the following....” [avocational or recreational courses such as bartending]^d • (b) “...the Secretary shall not approve the enrollment of an eligible veteran in any course of flight training other than one given by an educational institution for credit toward a standard college degree....”

		<ul style="list-style-type: none"> • (c) “The Secretary shall not approve the enrollment of an eligible veteran in any course to be pursued by radio.” • (d) “...the Secretary shall not approve the enrollment of any eligible veteran not already enrolled in any course for any period during which the Secretary finds that more than 85 percent of the students....” [85-15 rule] • (e) “The Secretary may not approve the enrollment of an eligible veteran in a course...offered by a proprietary profit or proprietary nonprofit educational institution....” [institution must have been in operation for 2 years or more to be approved] • (f) “The Secretary may not approve the enrollment of an eligible veteran in a course as a part of a program of education offered by an educational institution if the course is provided under contract by another educational institution....” • (g) “...the Secretary may approve the enrollment of an eligible veteran in a course approved under this chapter if the course is offered...under contract by the Department of Defense of the Department of Homeland Security....”
Control by agencies of the United States	§ 3682	<ul style="list-style-type: none"> • “Except as provided in section 3674A..., no department, agency, or officer of the United States, in carrying out this chapter, shall exercise any supervision or control, whatsoever, over any State approving agency....” [3674A lays out VA’s authorities to evaluate SAA performance]
Approval requirements for licensing and certification testing	§ 3689	<ul style="list-style-type: none"> • (a) “No payment may be made for a licensing or certification test...unless the test is deemed approved...or the Secretary determines that the requirements of this section have been met with respect to such test and the organization or entity offering the test.” • (b) “To the extent that the Secretary determines practicable, State approving agencies may, in lieu of the Secretary, approve licensing and certification tests and the organizations offering such tests....”
Overcharges by educational institutions; discontinuance of	§ 3690	<ul style="list-style-type: none"> • (a)(2) “The Secretary may disapprove such educational institution....” [if it charges tuition and

allowances; examination of records; false or misleading statements		<p>fees to veterans in excess of those for non-veterans]</p> <ul style="list-style-type: none"> • (b)(1) “The Secretary may discontinue the educational assistance allowance of any eligible veteran if...the...course fails to meet any of the requirements of this chapter or chapter 34 or 35...” • (b)(3)(A) “The Secretary may suspend educational assistance to eligible veterans...because (i) the course approval requirements of this chapter are not being met, or (ii) the educational institution...has violated one or more of the recordkeeping or reporting requirements...” [Secretary must notify the SAA of institutions failure to meet approval requirements and provide institution 60 days to take corrective action] • (d) “Whenever the Secretary finds that an educational institution has willfully submitted a false or misleading claim, or that a veteran...has submitted such a claim, the Secretary shall make a complete report...to the appropriate State approving agency, and where deemed advisable, to the Attorney General of the United States...”
Limitation on certain advertising, sales, and enrollment practices	§ 3696	<ul style="list-style-type: none"> • (a) “The Secretary shall not approve the enrollment of an eligible veteran...in any course offered by an institution which utilizes advertising, sales, or enrollment practices...which are erroneous, deceptive, or misleading...” • (d)(1) “The Secretary shall not approve under this chapter any course...if the educational institution provides any commission, bonus, or other incentive payment based...on success in securing enrollments...”
Regulation: 38 C.F.R.		
Section title	Section number	Applicable subsections
Course and licensing and certification test approval; jurisdiction and notices	§21.4250	<ul style="list-style-type: none"> • (a)(1) “If an educational institution offers a resident course in a State, only the State approving agency for the State which the course is being offered may approve the course for VA training.” • (b) Approval by State approving agencies will be in accordance with the provisions of 38 U.S.C. Chapter 36 and such regulations and policies as the agency may adopt not in conflict therewith.” [State approving agencies’ approval] • (b)(2) Each State approving agency will notify the Department of Veterans Affairs of the suspension

		<p>of approval or disapproval of any course or licensing or certification test and will set forth the reasons for such suspension of approval or disapproval.”</p> <ul style="list-style-type: none"> • (b)(3) “If notice has been furnished that the State approving agency does not intend to act on the application of a school, the school may request approval by the Department of Veterans Affairs.” • (c)(1) “The Director, Vocational Rehabilitation and Employment Service may approve special restorative training in excess of 12 months...to enable an eligible child to pursue a program of education under 38 U.S.C. chapter 35.” [Department of Veterans Affairs approval] • “The Director of Education Service may approve....” [federal agency courses, schools in the Canal Zone, Guam, or Samoa; courses at other schools in accordance with 38 U.S.C. chapter 36; national apprenticeship programs operating in more than one state; licensing and certification tests offered by a federal agency or when the entity offering the test is not located in a state, and the SAA has declined the approval function]
<p>Courses precluded; erroneous, deceptive, or misleading practices</p>	<p>§ 21.4252</p>	<ul style="list-style-type: none"> • (a) “Enrollment will not be approved in any bartending or personality development course.” • (b) Enrollment will not be approved in any course which is avocational or recreational....” • (c) “The Department of Veterans Affairs may approve enrollment in any of the following types of course of flight training....” • (d) “Courses by radio. Enrollment in such courses will not be approved.” • (e) “VA will not approve enrollment of an individual...in a correspondence course...unless the course is accredited....” • (f) “VA will not approve the enrollment of an eligible person on 38 U.S.C. Chapter 35 in an alternative teacher certification program unless that program is offered by an institution of higher learning....” • (g) “VA may pay educational assistance to a veteran who is enrolled in a nonaccredited course...offered entirely or partly by independent study only if....”

		<ul style="list-style-type: none"> • (h) “VA will not approve...” [enrollment in an educational institution that uses erroneous or deceptive advertising] • (k) “When a State approving agency has suspended the approval of course for new enrollments, new enrollments in the course shall not be approved until the suspense is lifted....” • (l) “The Department of Veterans Affairs may approve...” [veterans seeking a degree who have only been provisionally admitted] • (m) “VA may not approve enrollment...if the educational institution or entity providing the course under contract has not obtained a separate approval for the course in the same manner as any other course....” [courses offered under contract]
Suspension or disapproval	§21.4259	<ul style="list-style-type: none"> • (a) “The State approving agency, after approving any course or licensing or certification test: (1) may suspend....” • (b) “Each State approving agency will immediately notify VA of each course, or licensing or certification test that it has suspended or disapproved.” (c) “The Department of Veterans Affairs will suspend approval for or disapprove courses or licensing or certification tests...where it functions for the State approving agency.”

Source: VES analysis of approval and disapproval authorities in 38 U.S.C. and 38 C.F.R.

Note: Although the statute uniformly refers to “the Secretary” when assigning authorities, regulations refer alternatively to “the Secretary,” “VA,” or “the Department of Veterans Affairs.”

^a“Designation” (§ 3671) was last amended in 2011 when the Secretary was also given approval and disapproval authority. The implementing regulation, § 21.4150, “Designation” has not been amended since 2007.

^bSection 408 of P.L. 114-315 replaced “the Secretary and the State approving agency” with the State approving agency and the Secretary when acting in the role of a State approving agency. NASAA supported this change in wording during April 2016 testimony: “This change clarifies and codifies that State approving agencies have the primary statutory authority to protect our Veterans and their families from those who would engage in unscrupulous conduct.”

^cIn 2016, § 408 of P.L. 114-315 removed the reference to “accredited for-profit institutions” and replaced it with a reference to institutions not covered by § 3672, that is, accredited standard degree programs offered at public and not-for-profit institutions.

^dAlthough § 3680A directs the Secretary to not approve precluded courses, the implementing regulation, 38 CFR § 21.4252, is silent on the assignment of this authority with respect to avocational and recreational courses.